THE HONOURABLE SRI JUSTICE V.ESWARAIAH

W.P. No. 12661 of 1999

Date:03-10-2007

Between:

P. Sadashankar Dave and three others

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Petitioners

AND

The State of A.P. rep. By the Commissioner of Endowments, Hyderabad and others

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Respondents

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ORDER:

The petitioners question the order of the second respondent, dated 23.10.1998 in R.P.No.36 of 1996, setting aside the orders of the third respondent in O.A.No.1 of 1995, dated 18.03.1996 and remanding the matter back to him with a direction to dispose of the implead petition in I.A.No.1 of 1996 filed by the respondents 4, 9 and 10.

The brief facts of the case are that the first petitioner is the son and the petitioners 2 to 4 are the daughters of late Rameshwarji. The said Rameshwarji is the adopted son of Sawairamjee. The property of an extent of 1958 square yards belonging to Sawairamjee has been succeeded by Rameshwarji. It is stated that out of the said property, Rameshwarji constructed a temple in an extent of 791 square metres and the remaining extent of 1070 square metres was retained by him as his personal property. The land in an extent of 1070 square metres was gifted by Rameshwarji in favour of the first petitioner and his mother under registered gift deed No.1080/59, dated 21.09.1959. The mother of the first petitioner viz. Sundari Bai died on 11.11.1982. As such, the first petitioner including the petitioners 2 to 4 have become joint owners of the said property.

While so, when the Endowments Department erroneously claimed the property to be of theirs, the first petitioner filed a petition under Section 87(1)(c) of A.P. Charitable and Hindu Religious Institutions and Endowment Act, 1987 before the third respondent in O.A.No.1 of 1988, who in turn by order, dated 02.01.1990 held that out

of the total area of 1861 square metres covered by T.S.No.21, Ward 49 of Block J of Nampally village, an extent of 791 square metres is covered by the temple as per 'Munthakab and plan'. Thus, it is the case of the petitioners that out of 1861 square metres, an extent of 791 square metres belongs to the temple and therefore, there was no dispute with regard to the remaining extent of 1070 square metres, which is the private property of the petitioners. The said order was also confirmed by the first respondent in Rc.No.N1/17795/90, dated 17.04.1990.

Thereafter, the third respondent suo-motu reopened the enquiry in O.A.No.1 of 1995 wherein the contesting respondents made a claim by filing an interlocutory application to hear them and reopen the matter. Accordingly, their contentions were heard observing that there is no new record to come to a different conclusion as the plan and munthakab available in the original registration file only goes to show that the temple property is an extent of 791 square metres and the rest of the property belongs to the father of the petitioners herein and in fact they have no
locus standi to reopen the main case.

Aggrieved by the said order, the contesting respondents filed a revision before the second respondent in R.P.No.36 of 1996 and the second respondent admittedly did not call for any records or remarks and based on the revision petition alone, allowed the revision on the ground that the third respondent did not give any opportunity to the contesting respondents who filed the implead petition in O.A.No.1 of 1995 and while setting aside the order in O.A.No.1 of 1995, remanded the matter back to the third respondent.

The said order is questioned in this writ petition contending that admittedly the second respondent did not call for records and without

perusing the records came to such a conclusion that the contesting respondents were not given any reasonable opportunity, which is illegal and unsustainable in law. It is further stated that, in fact, there is no dispute with regard to the temple land and private land and the Assistant Commissioner of Endowments Department, Twin Cities, Hyderabad in Letter No.D/231/2002, dated 21.03.2002 demarcated the temple land as well as the private land in the sketch map enclosed along with the said proceedings.

On the other hand, the learned Government Pleader for the Endowments Department submits that the impugned order passed by the 2nd respondent is legal and valid and the 2nd respondent remanded the matter back in exercise of his powers under Section 92 of Act 30/87 by setting aside the order of the third respondent in O.A.No.1 of 1995, dated 18.03.1996 holding that the revision petitioner was not given opportunity while disposing of
O.A.No.1 of 1995 and without considering the implead petition in I.A.No.1 of 1996.

A perusal of the entire record which led to passing of the order, dated 18.03.1996 in O.A.No.1 of 1995 by the third respondent goes to show that the implead petitioners were heard and their contentions were considered and orders were passed on merits and therefore, it cannot be said that reasonable opportunity was not given to them.

In view of the aforesaid facts and circumstances of the case, I am of the opinion that the order, dated 23.10.1998 in R.P.No.36 of 1996 passed by the Regional Joint Commissioner, Endowments, Hyderabad/2nd respondent is illegal and unsustainable in law.

Accordingly, the writ petition is allowed. No costs.

V.ESWARAIAH, J.

Date:03.10.2007
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